



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Interstate Diesel Service, Inc.

File: B-230153.2

Date: April 14, 1988

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### DIGEST

Dismissal of protest as academic does not provide a basis upon which bid protest costs may be awarded.

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### DECISION

Interstate Diesel Service, Inc. submits a claim for the costs of pursuing a protest which we previously dismissed as academic. Interstate protested the Defense Logistic Agency's (DLA) apparent rejection of its quote under request for quotations No. DLA700-88-Q-RA99. After the protest was filed, the agency determined that Interstate's quote should, in fact, have been considered. DLA therefore canceled the award it had made to a higher priced offeror and is evaluating the protester's offer.

We issued no decision on the merits of Interstate's protest, finding it to be academic since the contracting agency has granted the requested relief. Interstate does not question this determination, but requests the reimbursement of its protest costs. According to Interstate, even though its offer has been reinstated, it should nonetheless be granted its costs.

We disagree. Our authority to allow the recovery of costs claimed by Interstate is predicated upon a determination by our Office that the solicitation, proposed award or award of a contract does not comply with a statute or regulation. 31 U.S.C. § 3554(c)(1) (Supp. III 1985); Interstate Diesel Service, Inc., B-229610, et al., Feb. 17, 1988, 88-1 CPD ¶ 162. A decision on the merits of a protest is an essential condition to a declaration that the protester is entitled to the award of costs of filing and pursuing the protest, including attorneys' fees. Pitney Bowes, Inc., 64 Comp. Gen. 623 (1985), 85-1 CPD ¶ 696. Since we have

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made no such determination here, we have no basis for  
awarding Interstate's costs.

The claim is denied.

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